

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Julie R. Helvie,

Civil No. 08-779 (DWF/FLN)

Plaintiff,

v.

**ORDER AND MEMORANDUM**

Michael J. Astrue, Commissioner  
of Social Security,

Defendant.

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Julie R. Helvie, *Pro Se*, Plaintiff.

Lonnie F. Bryan, Assistant United States Attorney, United States Attorney's Office,  
counsel for Defendant.

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This matter is before the Court upon the self-styled objections of Plaintiff Julie R. Helvie ("Plaintiff") to Magistrate Judge Franklin L. Noel's Report and Recommendation dated October 8, 2008, recommending that this case be dismissed for lack of prosecution. Defendant Michael J. Astrue, Commissioner of Security, filed a Response to Plaintiff's Objections to Report and Recommendation (Doc. No. 12) on October 24, 2008. Plaintiff was without representation since a nonlawyer who refers to himself as a Disability Specialist, Matthew Hoeschen Ehrbright, declined to assist Plaintiff in securing counsel pursuant to a letter dated April 2008. The Court concluded that the interests of justice and the interests of all parties required this Court to direct Plaintiff to contact Legal Aid

attorney David Kuduk before ruling on the Report and Recommendation before the Court. The Plaintiff contacted David Kuduk, as directed by the Court.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

In an Order dated December 8, 2008, the Court stated that it would defer ruling on the Report and Recommendation until the Court received a response from David Kuduk. The Court has now received Mr. Kuduk's response. Moreover, the Plaintiff has moved the Court for a judgment on the pleadings and Lonnie F. Byran, Assistant United States Attorney, has indicated his intent to file a motion for summary judgment. Consequently, it is the intent of the Court, based upon its consultation with the chambers of Magistrate Judge Franklin L. Noel, to refer the matter back to Magistrate Judge Noel to proceed with the motions of the respective parties.

Based upon the status of the case, the Court's review of the record, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

## **ORDER**

1. The Court **VACATES WITHOUT PREJUDICE** to either party the recommendation to dismiss the above-entitled matter for lack of prosecution, given the current procedural status of the case.

2. In light of the Court's ruling, the procedural effect of the Court's Order will be that the case will proceed in due course before Magistrate Judge Franklin L. Noel on the parties' respective dispositive motions that either have been filed or will be filed.

Dated: January 28, 2009

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court

## **MEMORANDUM**

Now that Plaintiff has the benefit of counsel, the Court has been informed by both parties that they intend to proceed with dispositive motions in this matter, consistent with similarly situated social security cases. Consequently, the Court has denied or vacated the Report and Recommendation so that the matter can proceed with these motions before Magistrate Judge Noel as they would have if Plaintiff had counsel from the outset. In the event Plaintiff had not followed this Court's Order filed on December 8, 2008, which required her to contact David Kuduk, a Legal Aid attorney in Grand Rapids, Minnesota, the Court would have dismissed the case for lack of prosecution, consistent with the Report and Recommendation filed by Magistrate Judge Noel dated October 8, 2008. The Court has necessarily concluded that there will be no prejudice to either party in

proceeding with the dispositive motions each has indicated they have filed or intend to file. For these reasons, the Court has respectfully declined to dismiss the case for lack of prosecution.

D.W.F.